negligence," however, the question was properly excluded in the above form since it assumed facts not proven, and was not restricted merely to prior accidents but included also subsequent accidents. *Branch* v. *Klatt,* (Mich. 1912) 138 N. W. 263.

The opinion discloses that the Michigan court has at different times entertained different views in respect to the admissibility of evidence of prior accidents occurring at the place presently in question. The main criticism against the admission of such evidence is that it operates to prejudice the party before the jury and to confuse the issues. The entire opinion in *Woodworth* v. *Detroit United Railway,* 153 Mich. 108 is devoted to the settlement of this question and the conclusion is definitely set forth that "such testimony has a legitimate bearing upon the issue of negligence" and must be deemed admissible to establish both notice and negligence. In this connection see: *Bloomington* v. *Legg,* 151 Ill. 9; *Taylorville* v. *Stafford,* 196 Ill. 288; *Martinez* v. *Planel,* 36 Ill. 578; *Fordham* v. *Gouverneur Village,* 160 N. Y. 541; *Hunt* v. *Dubuque,* 96 Ia. 314; WIGMORE, EVIDENCE, §§ 252, 458.

EVIDENCE—PAROL EVIDENCE TO CONSTRUE WRITTEN INSTRUMENT.—Action upon a fire insurance policy by which the defendant company insured certain household goods of "Hammond Bros." for a specified period and while located in a specified building occupied by assured as a hotel and saloon. Plaintiff maintained that this policy covered not only the partnership property of Hammond Bros. but also the individual property of the partners. Defendant disputed the latter contention. *Held,* that parol evidence might be introduced to show that the term "Hammond Bros." was intended to be descriptive of both the partnership and of the individuals comprising it. *Hammond* v. *Capitol City Mutual Fire Ins. Co.* (Wis. 1912) 138 N. W. 92.

The court, admitting that decisions might be found taking a view contrary to that presently adopted, said, "But no good reason is perceived why parol proof of such conversations or negotiations is not admissible to solve a latent ambiguity in a writing, thus enabling the court to determine upon what precise subject matter the minds of the parties met. Nothing in the writing is thereby contradicted, nothing subtracted, nothing added. Cases not infrequently arise where members of a partnership have placed their individual names to an obligation and the question has been debated whether parol evidence might be availed of to prove that the obligation was actually incurred for and in behalf of the partnership. The instant case, however, presents a converse situation. An apparent partnership obligation is shown by parol evidence to include not only the partnership but also the individual members thereof as beneficiaries. Principles pertinent to the discussion are treated in the following cases: *L'Engle* v. *Scottish Union &c Ins. Co.* 48 Fla. 82; 67 L. R. A. 581: *Reed* v. *Insurance Co.,* 95 U. S. 23; *Washington Mutual Fire Ins. Co.* v. *St. Mary's Seminary,* 52 Mo. 480: *Davis* v. *Turner,* 120 Fed. 605: *Hogan* v *Wallace* 166 Ill. 328.

INSURANCE.—ELECTION TO REBUILD.—REMEDY OF THE INSURED.—An insurance company, in the exercise of its reserved option "to repair, rebuild or re-

place the property," notified the insured of its election to rebuild, but subsequently expressly refused to rebuild. In fact nothing was done towards rebuilding. The insured brought suit for the money value of the policy. *Held;* The insured can recover; it is optional with him to sue for the money indemnity, or for damages upon the agreement to rebuild. *Gage* v. *Connecticut Fire Insurance Co.* (Okla. 1912) 127 Pac. 407.

The strong trend of authority has been to consider policies containing an option to rebuild, as contracts with a double aspect, viz: to indemnify by a money payment; or to indemnify by rebuilding. Which it shall be is at the election of the insurer, but an election once made cannot be retracted. Neither feature of the contract is primary but they are in the alternative. An election to pay the face value of the policy creates the relation of debtor and creditor, but an election to rebuild makes the policy an ordinary building contract, with the rights, duties, obligations and measure of damages which pertain to building contracts. In such an election the liability for the face value of the policy never arises. At least such is the result where the insurer has commenced the work of rebuilding. *Morrell* v. *Irving Fire Ins. Co.,* 32 N. Y. 429, 88 Am. Dec. 396; *Beals* v. *Home Ins. Co.* 36 N. Y. 522; *Heilman* v. *Westchester Fire Ins. Co.,* 75 N. Y. 7; *Wynkoop* v. *Niagara Fire Ins. Co.,* 91 N. Y. 478, 43 Am. Rep. 686; *Munk* v. *Maryland Casualty Co.,* 116 App. Div. (N. Y.) 756; *Winston* v. *Arlington Fire Ins. Co.,* 32 App. D. C. 61, 20 L. R. A. N. S. 960; *Zalesky* v. *Iowa State Ins. Co.,* 102 Iowa 512, 70 N. W. 187; *American Cent. Ins. Co.* v. *McLanathan,* 11 Kan. 533; *Henderson* v. *Crescent Ins. Co.,* 48 La. Ann. 1176, 35 L. R. A. 385; *Fire Ass'n.* v. *Rosenthal,* 108 Pa. 474; *Hartford Fire Ins. Co.* v. *Peebles' Hotel Co.,* 82 Fed. 546, 27 C. C. A. 223; *Brown* v. *Royal Ins. Co.,* 1 El. & El. 853. See 3 AM. LAW REG. (N. S.) 404 at 414; COOLEY, BRIEFS 3832. VANCE, INS., § 179: 2 MAY, § 423. The principal case distinguishes between cases where the insurer begins the work of rebuilding, and those where an election is made and no work is done, by holding that in the latter the insured can elect his remedy. Such a distinction was denied *arguendo* in *Hartford Fire Ins. Co.* v. *Peebles' Hotel Co., supra,* but is supported by *Langan* v. *Aetna Ins. Co.,* 99 Fed. 374, affirmed 48 C. C. A. 174, 108 Fed. 985; *Home Mut. Fire Ins. Co.* v. *Garfield,* 60 Ill. 124, 14 Am. Rep. 27; 4 JOYCE, INS., § 3163. This conflict arises from the fact that the latter courts view the provision to rebuild not as an alternative right under the original contract but as an accord which is not valid as a satisfaction until executed. This difference in view-point is fundamental and cannot be reconciled with the majority cases.

INSURANCE—EXCEPTED OCCUPATIONS—PROXIMATE CAUSE.—A benefit certificate exempted the insurer from liability for death "directly traceable to employment" in the "occupation" of brakeman. Insured was run over in the yards of the railroad by which he was so employed, ten minutes before he would have been on duty had he been "called." Whether he had been "called," and what he was doing between the cars, were facts unexplained by the evidence. *Held,* if a brakeman is run over when not on duty or performing any office of his employment, his death is not directly traceable to